



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

July 23, 1992

Mr. Travis S. Ware  
Lubbock County Criminal District Attorney  
P. O. Box 10536  
Lubbock, Texas 79408-3536

OR92-424

Dear Mr. Ware:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, V.T.C.S. article 6252-17a. Your request was assigned ID# 14887.

Pursuant to Local Government Code sections 172.001-.015, Lubbock County has established a self-insurance plan for its employees and their dependents. Claims against the plan are paid out of a county self-insurance pool. Lubbock County has received an Open Records Act request for access to all records referring to insurance claims paid by Lubbock County's self-insurance plan during 1990 through 1991, including information concerning the following: the name, age, and job title of the claimant; the total amount of the claim paid; and the nature of the illness or injury which is the basis for the claim. Lubbock County requests the attorney general's opinion concerning whether records of insurance claims paid by Lubbock County's self-insurance plan are public information pursuant to the Open Records Act. The county contends that the requested information is private and confidential and is excepted from required public disclosure by Open Records Act section 3(a)(1).

You have submitted for our review representative documents responsive to the request, which include the following: insurance enrollment/application forms (Exhibits 1-2); student enrollment forms (Exhibit 3); applicants' personal health statements (Exhibit 4); medical claim forms (Exhibit 5); a sample check to an attending physician (Exhibit 6); account statements showing the name of the insured and various charges by health providers (Exhibit 7-8); account statements showing totals paid to various insureds (Exhibit 9); a sample monthly transaction register showing the names of employees/claimants and sums paid to designated health care

providers (Exhibit 10); a register of sums paid to employees/claimants (Exhibit 11); a group summary total showing total sums paid for various types of claims, *e.g.*, accident expenses, ambulances, anesthesiology, etc. (Exhibits 12-13); and a "turnaround time report" showing total numbers of claims processed for a particular period (Exhibit 14).

Section 3(a) of the Open Records Act provides that all information in the possession or control of a governmental body is public information, unless the information meets one of the act's enumerated exceptions. Section 3(a)(1) excepts from required public disclosure "information deemed confidential by law, either Constitutional, statutory, or by judicial decision." The county contends that the insurance claim records are deemed confidential by law pursuant to section 5.08 of the Texas Medical Practices Act, V.T.C.S. article 4495b, because the insurance claim forms reflect the name and diagnosis of the examining physician. Section 5.08 provides in relevant part:

- (a) Communications between one licensed to practice medicine, relative to or in connection with any professional services as a physician to a patient, is confidential and privileged and may not be disclosed except as provided in this section.
- (b) Records of the identity, diagnosis, evaluation, or treatment of a patient by a physician that are created or maintained by a physician are confidential and privileged and may not be disclosed except as provided in this section.
- (c) Any person who receives information from confidential communications or records as described in this section . . . may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was first obtained.
- (d) The prohibition of this section continues to apply to confidential communications or records concerning any patient irrespective of when the patient received the services of a physician.

V.T.C.S. art. 4495b. The obvious intent of these provisions is to insure the confidentiality of the doctor-patient relationship and communications.

The insurance applications require the applicant to list prior injuries and the applicant's treating physician. The insurance claim forms require the claimant to state the diagnosis of his illness or injury and the name of the attending physician. We agree that this information is deemed confidential under sections 5.08(a) and (b) of the Medical Practices Act, because this information reflects the communication of a doctor to his patient. *See Alpha Life Insur. Co. v. Gayle*, 796 S.W.2d 834, 835-36 (Tex. App.--Houston [14th Dist.] 1990) (holding that insurance forms reflecting diagnoses and names of physicians were deemed confidential by Medical Practices Act section 5.08 and the constitutional right to privacy). Thus this information is excepted from required public disclosure under Open Records Act section 3(a)(1). However, the confidentiality of this information does not warrant denying the request for information in its entirety.

We believe that the names, ages, and job titles of the claimants, as well as the amounts of claims paid, is public information and is not excepted from required public disclosure under Open Records Act section 3(a)(1). We also conclude that the names of the physicians receiving direct payments and the amounts of the direct payments are not excepted from required public disclosure under Open Records Act section 3(a)(1). The confidentiality provisions of the Medical Practices Act do not apply because this information does not evidence or refer to the doctor-patient relationship; rather this information refers to the insurer and his insured, or the insurer and the health care provider. The common-law right to privacy extends to information that is highly intimate or embarrassing such that a reasonable person would find public disclosure highly offensive, and that the public has no legitimate interest in knowing. *See Open Records Decision Nos. 579, 562, 554, 539 (1990)*. The common-law right to privacy does not except this information from required public disclosure, because the information is not intimate or embarrassing.

You also claim that the names of dependents, spouses, or parents is private and should not be disclosed to the public. This information is not highly intimate or embarrassing, and therefore common-law privacy does not apply.

You claim that Exhibit 3, the student enrollment form, should be deemed confidential because the insurance plan administrator has promised that this information will be kept confidential. However, this office has previously ruled that

a document is confidential only if confidential under a statute, the constitution, or judicial decision, and that public information cannot be made confidential by promise or agreement. *See* Open Records Decision Nos. 514, 491 (1988); 484, 479 (1987). The information requested on Exhibit 3 is not highly intimate or embarrassing, and there is no particular statute deeming this information confidential. Thus it is not excepted by section 3(a)(1).

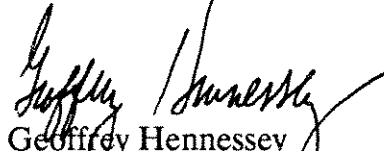
You also contend that Open Records Act section 3(a)(17) excepts from required public disclosure the home addresses, telephone numbers, and social security numbers of Lubbock County employees. Section 3(a)(17) and 3A(a) provide that state employee's home telephone numbers and addresses are excepted from public disclosure if the employee has elected that this information be withheld from the public and has reported this election to the appropriate personnel officer. Therefore, an employee's home address and telephone number should be disclosed unless the employee properly has already reported to the county personnel officer that this information should not be publicly disclosed.

In summary: The names, ages, and job titles of insurance claimants, as well as the amount of claims paid to claimants, is public information and is not excepted pursuant to Open Records Act section 3(a)(1). Furthermore, the names of physicians receiving direct payments and the amounts of those payments is public information and not excepted under Open Records Act section 3(a)(1). However, the names and diagnoses of the insureds' physicians, as reflected on the insurance applications and claim forms, and any other information that would tend to link an insured with a particular physician, hospital, clinic, or diagnosis is deemed confidential by sections 5.08(a) and 5.08(b) of the Medical Practices Act, V.T.C.S. article 4495b, and is excepted from required public disclosure by Open Records Act section 3(a)(1). Therefore, Exhibits 1 through 5 and Exhibits 7 through 9 should be disclosed to the requestor with the names of the claimants' physicians and the diagnoses redacted. Exhibits 6 and 10 should be disclosed with the names of the patients/insureds redacted. Exhibits 11 through 14 do not contain any excepted information and should be released in their entirety.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with

a published open records decision. If you have any questions about this ruling please refer to OR92-424.

Very truly yours,

  
Geoffrey Hennessey  
Assistant Attorney General  
Opinion Committee

GH/lmm

Ref.: ID# 14887  
ID# 15172

cc: Mr. Burle Pettit  
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